

Direct Service Worker Registry

**RULE**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Direct Service Worker Registry  
(LAC 48:I.Chapter 92)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 48:I.Chapter 92 as authorized by R.S. 40:2179-2179.1. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Health Standards**

**Chapter 92. Direct Service Worker Registry**

**Subchapter A. General Provisions**

**§9201. Definitions**

*Abuse—*

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
  - a. sexual abuse;
  - b. exploitation; or
  - c. extortion of funds or other things of value to such an extent that the health, moral or emotional well-being of the individual being supported is endangered; or
3. the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

*Department*—the Louisiana Department of Health and Hospitals.

*Direct Service Worker*—an unlicensed person who provides personal care or other services and supports to persons with disabilities or to the elderly to enhance their

well-being, and who is involved in face-to-face direct contact with the person and is compensated through state or federal funds. Functions performed may include, but are not limited to, assistance and training activities of daily living, personal care services, and job-related supports.

*Exploitation*—the illegal or improper use or management of an aged person's or disabled adult's funds, assets or property, or the use of an aged person's or disabled adult's power-of-attorney or guardianship for one's own profit or advantage.

*Extortion*—the acquisition of a thing of value from an unwilling or reluctant adult by physical force, intimidation or abuse of legal or official authority.

*Misappropriation*—taking possession without the permission of the individual who owns the personal belongings or the deliberate misplacement, exploitation or wrongful temporary or permanent use of an individual's belongings or money without the individual's consent.

*Neglect*—failure to provide the proper or necessary medical care, nutrition or other care necessary for a person's well-being.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006).

## **§9202. Introduction**

A. The Department of Health and Hospitals (DHH) shall develop and maintain a registry for individuals who have, at a minimum, successfully completed a direct service worker training and competency evaluation, and criminal background check. The registry may also indicate additional training obtained to address specialized needs and/or certified medication attendant (CMA) training.

B. The Direct Service Worker Registry will contain the following items:

1. a list of individuals who have successfully completed a direct service worker training curriculum and competency evaluation. Each individual listed will have the following information maintained on the registry:

- a. name;
- b. address;
- c. Social Security number;
- d. phone number;
- e. place of employment;
- f. date of employment;
- g. date employment ceased;
- h. state registration number; and
- i. documentation of any investigation including codes for specific findings of:

- i. abuse;
- ii. neglect;
- iii. extortion;
- iv. exploitation and misappropriation of property;

and

v. an accurate summary of findings after action on findings are final and after any appeal is ruled upon or the deadline for filing an appeal has expired; and

2. information relative to training and registry status which will be available through procedures established by the Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section (HSS).

C. Registrations are renewable annually. The registry will verify renewals and whether the direct service worker has worked 40 hours in an approved setting within the past 12 consecutive months.

D. Employers must use the registry to determine if a prospective hire is a registered direct service worker and if there is a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006).

## **Subchapter B. Training and Competency Requirements**

### **§9211. General Provisions**

A. The direct service worker required training and competency evaluation must both be approved by DHH/HSS.

B. The required hours of training and competency evaluation may be provided by:

1. the licensed provider employing the direct service worker;
2. community colleges;
3. vocational-technical schools; or
4. other educational facilities.

C. Entities may offer the complete training curriculum themselves or may contract with another approved organization or entity to provide the training and/or competency evaluation.

D. A DSW training program must submit copies of competency evaluations such as protocols and tests to be used with the training curriculum.

E. Direct service workers currently employed by a DSW agency on the effective date of this Rule may be deemed to meet the training and competency requirements if:

1. the employer attests, in writing on the department-approved form, to the worker's competency for all required training components; and
2. the direct service worker has 18 months verifiable work experience providing supports/services to the elderly or people with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006).

### **§9213. Trainee Responsibilities**

A. An individual who has not performed DSW-related services for pay for at least 40 hours in an approved setting within a consecutive 12-month period after completion of a training and competency evaluation or being placed on the registry must, at a minimum, successfully complete a new competency evaluation before he/she can be placed on the DSW Registry.

B. Trainees must take the competency evaluation (through skills demonstration and either written or oral examination) within 30 days after completion of the training curriculum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006).

## **§9215. Training Curriculum**

### **A. Core Curriculum**

1. The curriculum content for the direct service worker training includes material which provides a basic level of both knowledge and demonstrable skills for each individual completing the training. The core curriculum content includes needs of the populations which may be served by the direct service worker.

a. The core curriculum must be a minimum of 16 hours and completion of an approved cardiopulmonary resuscitation (CPR)/First Aide course.

2. Each training curriculum must have behaviorally-stated objectives for each unit of instruction. The unit objectives will be reviewed with the trainees at the beginning of each unit so each trainee will know what is expected of him/her in each part of the training.

### **B. Minimum Curriculum Requirements**

1. The objective of the training curriculum is the provision of quality services by direct service workers who are able to:

a. communicate and interact competently on a one-to-one basis with individuals as part of the team implementing their care objectives;

b. demonstrate sensitivity to the individual's emotional, social, and mental health needs through skillful, directed interactions;

c. assist individuals in attaining and maintaining functional independence; and

d. exhibit behavior to support and promote the rights of individuals.

2. The trainee must have completed the minimum 16 hours of instruction prior to the trainee's direct involvement with an individual receiving services. The 16 hours of training must include, but is not limited to:

a. abuse/neglect/misappropriation of property (unit developed by the department);

b. staff ethics, including:

i. the prohibition against soliciting consumers from other provider agencies;

ii. respectful interactions with people being served; and

iii. the use of "People First Language;"

c. human and civil rights;

d. confidentiality and Health Insurance Portability and Accountability Act (HIPAA) of 1996 requirements;

e. person-centered planning, personal outcomes and self-determination philosophy;

f. incident documentation and reporting;

g. documentation of services, progress notes, etc.;

h. environmental emergency procedures; and

i. infection control/universal precautions.

3. The trainee must complete an approved CPR and First Aide course within 45 days of being hired.

### **C. Curriculum Approval**

1. To get a training curriculum and/or competency evaluation program approved, the entity (provider or school) must submit the following to the department's Health Standards Section:

a. a copy of the curriculum;

b. the name of the training coordinator and his/her qualifications; and

c. a list of any other instructors.

2. If a school is applying for approval, it must identify the place(s) used for classroom instruction and clinical experience.

3. An approved entity (provider or school) must submit any content changes of the training curriculum and competency evaluation to the department for review and approval.

4. If a provider or school, that has an approved curriculum, ceases to provide training and/or competency evaluations, it must notify the department. Prior to resuming the training program and/or competency evaluations, the provider or school must reapply to the department for approval to resume the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006).

## **§9217. Training Coordinators**

A. Every direct service worker training curriculum must have a training coordinator who provides general supervision of the training received by the DSW.

B. The training coordinator must have the following experience or qualifications:

1. a minimum of two years verifiable experience, via work references, in providing supports or services to people with disabilities, the elderly or chronically ill in any setting including, but not limited to:

a. personal care services agency;

b. a community residence;

c. a hospital; or

d. nursing facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006).

## **§9219. Competency Evaluation**

A. The competency evaluation must be developed and conducted to ensure that each direct service worker, at a minimum, is able to demonstrate competencies in the training areas in §9215.A-B.3.a-i.

B. Written or oral examinations will be provided by the training entity or organizations approved by the department.

C. The examination will reflect the content and emphasis of the training curriculum and will be developed in accordance with accepted educational principles.

D. A substitute examination, including an oral component, will be developed for those direct service workers with limited literacy skills. This examination must contain all of the content that is included in the written examination and must also include a written reading comprehension portion that will determine competency to read job-related information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006).

## **§9221. Compliance with Training and Competency Evaluation**

A. The review of compliance with training and competency requirements will include, at a minimum, a review of:

1. training content and length;
2. qualifications of training coordinators; and
3. the written and skills competency evaluation protocols.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006).

### **Subchapter C. Provider Participation**

#### **§9231. Provider Responsibilities**

A. Prior to hiring any direct service worker or trainee, a licensed provider must access the registry to determine if the potential hire is registered.

1. The individual may not be hired unless he/she is in good standing on the registry or he/she is a trainee enrolled in a training program of a provider or school that has an approved training curriculum.

B. The provider or school shall not accept a trainee into a training curriculum until they have verified with the CNA and DSW registries that the potential trainee has not had a finding of abuse, neglect or misappropriation of an individual's property placed on either registry.

C. Onsite direct supervision of the direct service worker is required at all times until he/she completes the training and competency evaluation and is placed on the registry.

1. The trainee must complete the required training and competency evaluation and the results must be submitted by the training provider to the department within 60 days of employment with the provider.

D. Any organization responsible for the training and competency evaluation must report to the registry the names of all individuals who have satisfactorily completed the curriculum after their completion of the training. Within 15 days after a direct service worker has successfully completed the training curriculum and competency evaluation, including the approved CPR training, the provider or school shall notify the registry.

E. Providers shall use the appropriate forms designated by the department to notify the registry of:

1. employment or termination of direct service workers; and
2. persons who have completed a DSW training and/or competency evaluation, including CPR training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

### **Subchapter E. Violations**

#### **§9271. Disqualification of Training Programs**

A. The department may prohibit DSW training curriculums offered by providers that have demonstrated substantial noncompliance with training requirements including, but not limited to:

1. the qualifications of training coordinators;
2. training curriculum requirements; or
3. failure of 30 percent of trainees to successfully complete competency evaluations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

#### **§9273. Allegations of Direct Service Worker Wrong-Doing**

A. The department, through its Bureau of Appeals, has provided for a process of the review and investigation of all allegations of wrong-doing by direct service workers. Direct service workers and trainees must not:

1. use verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion on an individual being supported; nor
2. neglect an individual or commit exploitation, extortion, or misappropriation of the individual's property or funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

#### **§9275. Notice of Violation**

A. When there are substantiated charges against the direct service worker, either through oral or written evidence, the department will notify the individual(s) implicated in the investigation of the following information by certified mail:

1. the nature of the violation(s) and the date and time of each occurrence;
2. the department's intent to report these violations to the DSW Registry; and
3. the right to request an informal discussion and the right to an administrative hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

#### **§9277. Informal Dispute Resolution**

A. When a direct service worker feels that he/she has been wrongly accused, the following procedure should be followed.

1. The direct service worker may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the agency's notice of violation. The request for an IDR must be made to the agency in writing.

2. The IDR is designed:

- a. to provide an opportunity for the direct service worker to informally review the situation;
- b. for the agency to offer alternatives based on corrections or clarifications, if any; and
- c. to evaluate the necessity for seeking an administrative hearing.

3. An IDR meeting will be arranged within 20 days of the request.

4. During the IDR, the direct service worker will be afforded the opportunity to:

- a. talk with agency personnel involved in the situation;
- b. review pertinent documents upon which the alleged violation is based;
- c. ask questions;
- d. seek clarifications; and
- e. provide additional information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006).

## **Subchapter F. Administrative Hearings**

### **§9285. General Provisions**

A. Within 30 calendar days after receipt of the department's notice of violation or the notice of the results of an informal dispute resolution, the direct service worker may request an administrative hearing.

1. The request for an administrative hearing must be made in writing to the department's Bureau of Appeals.

2. The request must contain a statement setting forth the specific charges with which the direct service worker disagrees and the reasons for this disagreement.

3. Unless a timely and proper request is received by the Bureau of Appeals, the findings of the department shall be considered a final and binding administrative determination.

a. Notification of the finding of abuse, neglect and/or misappropriation will then be sent to the DSW Registry to be recorded.

B. When an administrative hearing is scheduled, the Bureau of Appeals shall notify the direct service worker, his/her representative and the agency representative in writing.

1. The notice shall be mailed no later than 15 calendar days before the scheduled date of the administrative hearing and shall contain the:

- a. date of the hearing;
- b. time of the hearing; and
- c. place of the hearing.

C. The administrative hearing shall be conducted by an administrative law judge from the Bureau of Appeals as authorized by R.S. 46:107 and according to the following procedures.

1. An audio recording of the hearing shall be made.

2. A transcript will be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the transcript.

3. Testimony at the hearing shall be taken only under oath, affirmation or penalty of perjury.

4. Each party shall have the right to:

- a. call and examine parties and witnesses;
- b. introduce exhibits;
- c. question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination;
- d. impeach any witness, regardless of which party first called him to testify; and
- e. rebut the evidence against him/her.

5. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal actions.

a. Documentary evidence may be received in the form of copies or excerpts.

6. The administrative law judge may question any party or witness and may admit any relevant and material evidence.

7. A party has the burden of proving whatever facts he/she must establish to sustain his/her position.

8. The burden of producing evidence to substantiate the written allegation(s) will be on the department and the provider of services, if appropriate.

9. When the allegation(s) supporting removal from the registry is substantiated, the direct service worker may not rest on the mere denial in his/her testimony and/or pleading(s) but must set forth specific facts and produce evidence to disprove or contest the allegation(s).

D. Any party may appear, and be heard, at any appeals proceeding through an attorney or a designated representative. The representative shall have a written authorization to appear on behalf of the provider.

1. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying:

- a. his/her name;
- b. address;
- c. telephone number; and
- d. the party being represented.

E. At the conclusion of the administrative hearing, the administrative law judge shall:

1. take the matter under advisement; and
  2. prepare a written proposed decision which will contain:
    - a. findings of fact;
    - b. a determination of the issues presented;
    - c. a citation of applicable policy and regulations;
- and
- d. an order.

F. The written proposed decision is provided to the secretary of the department. The secretary may:

1. adopt the proposed decision;
2. reject it based upon the record; or
3. remand the proposed decision to the administrative law judge to take additional evidence.

a. If the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary.

G. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the courts. A copy of the decision shall be mailed to the direct service worker at his last known address and to any representative thereof.

H. If there is a final and binding administrative hearing decision to place a finding on the DSW Registry against the direct service worker, the department shall place the direct service worker's name and the adverse findings on the DSW Registry. The occurrence and findings will remain on the DSW Registry permanently.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006).

### **§9287. Preliminary Conferences**

A. Although not specifically required, the Bureau of Appeals may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. clarification, formulations and simplification of issues;
2. resolution of controversial matters;
3. exchange of documents and information;

4. stipulations of fact to avoid unnecessary introduction of witnesses; and

5. other matters which may aid disposition of the issues.

B. When the Bureau of Appeals schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. When the preliminary conference resolves all or some of the matters in controversy, a summary of the findings agreed to at the conference shall be provided by the administrative law judge. When the preliminary conference does not resolve all of the matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

1. The hearing shall be scheduled within 30 calendar days following the completion of the preliminary conference or at a time mutually convenient to all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006).

#### **§9289. Witnesses and Subpoenas**

A. Each party shall arrange for the presence of their witnesses at the administrative hearing.

B. A subpoena to compel the attendance of a witness may be issued by the administrative law judge:

1. upon written request by a party and a showing of the need for such action; or

2. on his own motion.

C. An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records shall be made in writing to the administrative law judge. The written application shall:

1. give the name and address of the person or entity upon whom the subpoena is to be served;

2. precisely describe the material that is desired to be produced;

3. state the materiality thereof to the issue involved in the proceeding; and

4. include a statement that, to the best of the applicant's knowledge, the witness has such items in his possession or under his control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006).

#### **§9291. Continuances or Further Hearings**

A. The administrative law judge may continue a hearing to another time or place, or order a further hearing on his own motion or at the request of any party who shows good cause.

B. Where the administrative law judge, at his/her discretion, determines that additional evidence is necessary for the proper determination of the case, he/she may:

1. continue the hearing to a later date and order the party(s) to produce additional evidence; or

2. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence:

a. any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

C. Written notice of the time and place of a continued or further hearing shall be given. When a continuance of further hearing is ordered during an administrative hearing, oral notice of the time and place of the continued hearing may be given to each party present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006).

#### **§9293. Failure to Appear at Administrative Hearings**

A. If a direct service worker fails to appear at an administrative hearing, a decision may be issued by the Bureau of Appeals dismissing the hearing. A copy of the decision shall be mailed to each party.

B. Any dismissal may be rescinded upon order of the Bureau of Appeals if the direct service worker:

1. makes written application within 10 calendar days after the mailing of the dismissal notice; and

2. provides evidence of good cause for his/her failure to appear at the hearing.

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HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006).

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